

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TRAMAINA JERNIGAN,

Plaintiff,

v.

No. CV 11-828 JH/CG

LUPE MARTINEZ, et al.,

Defendants.

ORDER GRANTING EXTENSION OF TIME

THIS MATTER comes before the Court on Plaintiff's *Response to Briefing Filed on Behalf of K. Opatz and S. Gallegos*, (Doc. 22). Plaintiff states that he never received a copy of Defendants' Court-ordered *Martinez Report*, (Doc. 16), and he requests Court assistance in pursuing his case. (Doc. 22 at 1-2). The Court, having considered the parties' filings, the relevant law, and otherwise being fully advised in the premises, will order that a second copy of the *Report* be mailed to Plaintiff and will grant him an extension of time to file a response to the *Report*.

Defendants filed their *Martinez Report* with the Court on June 12, 2012, and requested that the Court construe it as a motion for summary judgment. (Doc. 16 at 1). While preparing the *Report*, Defendants discovered that Plaintiff had been transferred from the Guadalupe Correctional Facility in Santa Rosa to the Northeast New Mexico Detention Facility ("NENMDF") in Clayton, New Mexico. (Doc. 16 at 1, 25; Doc. 20 at 1). Plaintiff never advised the Court of his change in address, which is in violation of the Rules of Civil Procedure for the District of New Mexico. See D.N.M.R-Civ. 83.6. Defendants mailed a copy of the *Report* to NENMDF but Plaintiff never filed a response. Defendants then filed a *Reply in Support of Defendants' Martinez Report* arguing, *inter alia*, that the Court should

dismiss all claims against them due to Plaintiff's failure to file a response in opposition to their *Report*. (Doc. 20 at 1-2).

Plaintiff now states that he never received a copy of Defendants' *Martinez Report*. (Doc. 22 at 1). He has appended two grievances filed with NENMDF staff complaining that he never received the *Martinez Report* and requesting copies of all incoming legal mail for the months of June and July. (*Id.* at 3-4). He requests that the Court assist him in determining how to proceed with this action. (*Id.* at 2). He further requests that the Court mail him copies of receipts for all partial payments paid by Plaintiff towards his filing fee. (*Id.*).

Although Defendants state that they mailed a copy of the *Report* to Plaintiff at NENMDF and that it was never returned as undeliverable, the Court will, in the interests of justice, order that a second copy of the report be mailed to Plaintiff. The Court will further grant him an extension of time to file a response to Defendants' *Report*. Cognizant that Plaintiff may not have received copies of the receipts for all partial payments due to his failure to advise the Court of his change in address, the Court will direct the Clerk of the Court to mail copies of said receipts to Plaintiff at NENMDF. Plaintiff is reminded that he has an ongoing duty to advise the Court of any change in address during the pendency of his case and that failure to comply with this rule may subject him to sanction by the Court.

IT IS THEREFORE ORDERED that the Clerk of the Court update Plaintiff's address on the docket to reflect his new address at NENMDF.

IT IS FURTHER ORDERED that the Clerk of the Court mail Plaintiff a copy of *Defendants Chaplain K. Opatz and S. Gallego's Martinez Report*, (Doc. 16). The Clerk is

further directed to mail copies of all partial payment receipts, (Docs. 6, 9, 10, 15, 17), to Plaintiff.

IT IS FURTHER ORDERED that Plaintiff shall have thirty days to file a response to Defendants' *Martinez Report*. Plaintiff's response shall be due on or before Wednesday, September 12, 2012. Defendants may file a reply to Plaintiff's response should they so desire.



THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE